



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov


*SW*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,934	08/09/2001	Paul Patterson	4008-00201	5816
30652	7590	12/14/2004	EXAMINER	
CONLEY ROSE, P.C.			MATHEW, FENN C	
5700 GRANITE PARKWAY, SUITE 330			ART UNIT	
PLANO, TX 75024			PAPER NUMBER	

3764

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/925,934	<b>Applicant(s)</b> PATTERSON, PAUL 	
	<b>Examiner</b> Fenn C Mathew	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 24-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12,31 and 33-35 is/are allowed.
- 6) ☒ Claim(s) 1-8, 11 and 24-27 is/are rejected.
- 7) ☒ Claim(s) 9, 10, 28-30 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II in the reply filed on 09/02/2004 is acknowledged. The traversal is on the ground(s) that the groups are not patentably distinct from one another. This is found persuasive, and claims 1-12 and 24-35 are pending.

### ***Claim Objections***

2. Claim 32 is objected to because of the following informalities: The claim is dependant on cancelled claim 13. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6-8, 11, and 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Winchel (U.S. 1,398,166). Winchal discloses a base member (1), and a first platform capable of supporting a first selected portion of an exercise device, the first platform is movable between a first position in which the first platform is generally level with the base member and a second position in which the first platform is elevated relative to the base member. (Examiner notes that although the functional language

Art Unit: 3764

has been considered, Applicant has not positively claimed the 'exercise machine', as it is not part of the device as a whole, and therefore, it does not add materially to the structure of the device as claimed.) Winchal further teaches a second platform (as seen in fig. 1) coupled to the base member and movable between a first position in which the second platform is generally level to the base member, and a second position in which the second platform is elevated relative to the base member. Winchel further teaches as broadly interpreted, a locking mechanism (12) on each the first and second platform. Referring to claim 6, Winchal discloses a support lever (6) to alternately elevate the first and second platforms, with the first and second platforms attached to the first and second end respectively of the support lever. Referring to claim 8, Winchal discloses the support lever is pivotally coupled to the base member. Additional limitations of claim 8 are discussed above. Absent any structural limitation on how accomplished, Winchal discloses that the platform can be adjusted and maintained at a plurality of elevations between generally level to fully elevated. Referring to claims 24-25, and 31-32, as noted above, the exercise device itself has not been positively claimed, therefore patentable weight has not been given to these claims. Referring to claims 26-27, as broadly interpreted, Winchal discloses a pair of platform locking mechanisms (60) wherein only one platform locking mechanism may be engaged at a time. (Refer to figure 4).

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winchal. Winchal fails to teach the exact ratios between the distances, however, the specific ratio would be a matter of obvious design choice within the knowledge of the skilled artisan absent unexpected or undesired results. Examiner notes that Winchal has two different 'locking mechanisms' at two different positions thereby amounting in a height difference.

#### ***Allowable Subject Matter***

7. Claims 9-10 and 28-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record fails to teach the support structure as claimed further comprising a support lever having a juncture at an obtuse angle.
8. Claims 12 and 33-35 are allowed. Please refer to paragraph 13 of the office action dated January 25, 2004 and the reasons cited in the paragraph above.

#### ***Response to Arguments***

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Furthermore, in light of new references, the allowability of claim 8 has been rescinded. See discussion above of the Winchal reference.

**Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure..

Weber	U.S. 5,125,884
Chang	U.S. 5,447,474
Brown	U.S. 6,551,219
Tornabene	U.S. 6,394,938

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/925,934

Page 6

Art Unit: 3764

*Jcm*

fcm

December 10, 2004



JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

12/12/04